

**STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
PUBLIC HEALTH HEARING OFFICE**

In re: Siegfried G. Carmon

Petition No. 2004-1115-091-005

April 13, 2005

**MEMORANDUM OF DECISION**

***Procedural History***

On January 27, 2005, the Department of Public Health ("the Department") filed a Statement of Charges ("the Charges") against Siegfried G. Carmon ("respondent") notifying him that the Department was seeking an order revoking or imposing other disciplinary action against his asbestos abatement site supervisor certificate no. 000003 ("the certificate"). H.O. Exh. 1.

Also on January 27, 2005, the Department issued a Notice of Hearing ("the Notice"). In the Notice, the Commissioner of the Department appointed this Hearing Officer to rule on all motions, determine findings of fact and conclusions of law, and issue an order. H.O. Exh. 2.

On March 22, 2005, an administrative hearing was held to adjudicate the Charges. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes and §§19a-9-1, et seq. of the Regulations of Connecticut State Agencies ("the Regulations"). Respondent neither appeared at the hearing nor requested that it be continued. Tr. pp. 2. The Department appeared at the hearing represented by Attorney Linda Fazzina.

During the hearing of March 22, 2005, the Department made a Motion to Deem the Allegations Admitted that was granted by the undersigned on that date. Tr. p. 5.

This Memorandum of Decision is based entirely on the record and sets forth this Hearing Officer's findings of fact, conclusions of law, and order. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H. Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985).

***Allegations***

1. In paragraphs 1 and 6 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut asbestos abatement site supervisor certificate number 000003.
2. In paragraphs 2 and 6 of the Charges, the Department alleges that on or about July 19, 2004, the Department accepted a Consent Order in Petition Number 2003-0409-091-001 (hereinafter "the Consent Order") that placed respondent's asbestos abatement site

supervisor certificate on probation for a period of one year. Such disciplinary action was based upon, among other things, respondent's admitted falsification of an application, the provision of asbestos contractor services without a valid certificate and the performance of asbestos abatement services in a manner that did not comply with the requirements of Sections 19a-332a-3 to 19a-332a-12 of the Regulations.

**A. First Count**

3. In paragraph 3 of the Charges, the Department alleges that the Consent Order specifically provided that respondent shall be responsible for the provision of monthly written reports directly to the Department from his employer, for the duration of his probation.
4. In paragraph 4 of the Charges, the Department alleges that the Department has not received employer reports for August and September 2004.
5. In paragraph 5 of the Charges, the Department alleges that respondent's conduct as described above constitutes violations of the terms of probation as set forth in the Consent Order, and subjects respondent's certificate to revocation or other disciplinary action authorized by the *Conn. Gen. Stat.* §§19a-17 and 20-440, taken in conjunction with §20-440-6(b) of the Regulations.

**B. Second Count**

6. In paragraph 7 of the Charges, the Department alleges that the Consent Order specifically provided that respondent make monthly payments of two hundred dollars (\$200.00) by no later than the 30<sup>th</sup> of each month, until the civil penalty is paid in full.
8. In paragraph 8 of the Charges, the Department alleges that respondent has failed to make payments toward the civil penalty for the months of August, September, October, November and December 2004.
9. In paragraph 9 of the Charges, the Department alleges that respondent's conduct as described above constitutes violations of the terms of probation as set forth in the Consent Order, and subjects respondent's certificate to revocation or other disciplinary action authorized by the *Conn. Gen. Stat.* §§19a-17 and 20-440, taken in conjunction with §20-440-6(b) of the Regulations.

***Findings of Fact***

1. The Consent Order provides that legal notice to respondent shall be deemed sufficient if mailed to him at his last known address of record with the Department. Dept. Exh. 1.
2. Respondent's last known address of record with the Department is 263 Norton Street, 2<sup>nd</sup> Floor, New Haven. Connecticut 06511. Dept. Exh. 2.

3. The Notice was mailed to respondent at his last known address of record by certified and first class U.S. Mail. The certified mailing came back unclaimed after three attempts at delivery, but the first class letter was not returned to the Department.<sup>1</sup> Tr. p. 5.
4. The Department made all reasonable efforts to effectuate mailing of the Notice of Hearing. Dept. Exhs. 1, 2; Tr. p.5; *see*, §19a-9-18(c) of the Regulations
5. Pursuant to the undersigned's Ruling of March 22, 2005, granting the Department's Motion to Deem the Allegations Admitted, all of the above allegations are deemed admitted and true. Tr. p. 5; *see also*, §19a-9-20 of the Regulations.

### ***Discussion and Conclusions of Law***

Pursuant to *Conn. Gen. Stat.* §§19a-14 and 19a-17, the Department has the authority to discipline an asbestos abatement site supervisor's certificate. In establishing the underlying violations to support such discipline, the Department bears the burden of proof by a preponderance of the evidence. *Swiller v. Comm'r. of Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, reh'g. den., 451 U.S. 933 (1981); *Bender v. Clark*, 744 F. 2d 1424 (10th Cir. 1984); *Sea Island Broadcasting Corp. v. F.C.C.*, 627 F. 2d 240, 243 (D.C. Cir. 1980); all as cited in *Bridgeport Ambulance Service, Inc., v. Connecticut Dept. of Health Services*, No. CV 88-0349673-S (Sup. Court, J.D. Hartford/New Britain at Hartford, July 6, 1989); *Swiller v. Commissioner of Public Health*, No. CV 95-0705601 (Sup. Court, J.D. Hartford/New Britain at Hartford, October 10, 1995).

The Consent Order provides that legal notice to respondent shall be deemed sufficient if mailed to him at his last known address of record on file with the Department.<sup>2</sup> The Notice of Hearing was mailed to him at that address. The Department, therefore, made all reasonable efforts to effectuate mailing of the Notice of Hearing. *See*, §19a-9-18(c) of the Regulations.

In view of the granting of the Department's Motion to Deem Allegations Admitted, the Department has established the violations noted above by a preponderance of the evidence.

The Department has requested that respondent's certificate be revoked. In view of respondent's non-compliance with the Consent Order, his continued failure to maintain contact with the Department, including his failure to attend the public hearing in the current matter, the

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<sup>1</sup> The returned certified mailing of the Notice of Hearing is hereby entered into the record as Hearing Officer Exhibit 3.

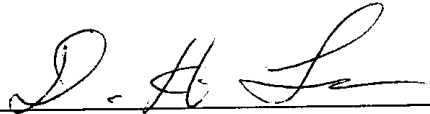
<sup>2</sup> Section 19a-89 of the General Statutes also requires any person holding a certificate issued by the Department to notify the Department of any change in address within thirty days of such change. The Department has received no notification from respondent of any change in his address.

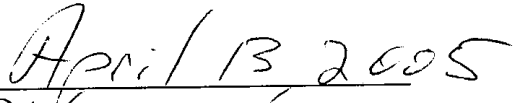
Department's requested relief is fully supported by the record. Accordingly, it is appropriate that respondent's asbestos abatement site supervisor certificate be revoked.

***Order***

Based on the record in this case, the above Findings of Fact and Conclusions of Law, this Hearing Officer orders the following:

1. Respondent's asbestos abatement site supervisor certificate no. 000003 is hereby revoked.
2. This decision does not dispose of any criminal liability unless respondent receives or has received a written agreement from the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau stating that this decision resolves any such liability.
3. This Order shall be effective from the date of signature.

  
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Donald H. Levenson, Esq.  
Hearing Officer

  
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Date